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Sent 12/30/82

From H Gaisch  
To Mr A Holtzman, Mr C Adkins

Subject: Meeting on 23rd December, 1982, Neuchatel  
The Barclay patent and general legal  
situation.

Participants:

Me Heinrich, Attorney, Zurich  
Me Champoud, Attorney, Lausanne  
Dr Hach, Patent Attorney, Mosbach  
Mr Becker, PMG, Munich  
Mr Mandiratta, Patent Administrator, PME Neuchatel  
Mr Nyffeler, Mr Marcovitch, Mr Pantet, Mr Gillam,  
Dr Gaisch

1 The meeting was opened by Gaisch giving an introduction to the historic development of the Barclay issue.

2 Dr Hach explained the content and claims of the Barclay patent and the situation in Germany with regard to our possible actions against the Barclay patent.

3 R&D staff explained that there are no possibilities to get around the Barclay patent if the desired discrepancy between machine and human smoke figures were to be exploited. That means : the Barclay patent covers all essential features in order to achieve the so called cheating effect.

4 Dr Hach explained that possible commercial counteraction by PM in terms of an EXIT launch could lead to defeat. Court action (temporary injunction) is a definite possibility forcing EXIT off the market three weeks after the launch date with a theoretical date of reintroduction only after appeal six months later.

Action based on unfair competition likely by competitors (others than BAT) based on the statements elaborated by PM in the United States and by FTR in Geneva resulting in a temporary injunction and elimination of EXIT from the market.

5 Me Heinrich elaborated on the Swiss situation. Preliminary injunction against an EXIT product only possible after Barclay patent has been issued in Switzerland but even then not terribly likely.

The future Swiss Barclay patent beeing attacked via the immoral issue route, even if injunction in Geneva is not granted, means that there is a great risk of

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temporary injunction in the case of EXIT launch requested by third competitors or co-plaintiffs of the Geneva case, based on the unfair competition aspect (Geneva case brought by FTR et altera against BAT. This could possibly happen in another canton.

Further more, the recent change of the Swiss smoking standard procedure (redefinition of leakage) makes an EXIT launch non-sensical.

6 Dr Hach to link with German lawyers (Hetzler, Eichmann) in order to produce assessment of the German situation by 12th January, 1983.

7 Me Heinrich to produce assessment on the Swiss situation by 12th January 1983.

8 I am available between x-mas and the New Year for coordinating the matter and for information.

Kind regards and best wishes,

Helmut Gaisch

cc  
All participants,  
Mr Serrano  
Mr Gibson

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